on a right of action given by Pennsylvania for the death of her husband alleged to have been killed in Pennsylvania by the negligence of the defendant. In accordance with an Ohio statute, which gave its courts jurisdiction in case of such actions only when the death was that of a citizen of Ohio, the State Supreme Court denied the plaintiff's right. The United States Supreme Court held that the statute was constitutional and did not deprive citizens of other states of the privilege accorded to citizens of Ohio. *Chambers* v. *Baltimore & Ohio R. R.* (1907) 28 Sup. Ct. 34. The opinion, affirming that the right to sue is a fundamental privilege, points out that since the denial of the right in this case did not depend upon the non-citizenship of the plaintiff there was no discrimination. According to the statute of Pennsylvania as interpreted by its court a right of action never vested in the deceased. *Fink* v. *Garman* (1861) 40 Pa. St. 95. It could not, therefore, be argued that the right of action was denied to the deceased when denied to its representative. It might be said, as was suggested in the dissenting opinion, that the statute discriminated against the deceased in denying to him the privilege of having his estate increased if he were killed by the negligent act of another. But such a privilege, novel and specially conferred, cannot be considered a fundamental right.

THE LAW GOVERNING THE LIABILITY OF A DRAWER OR INDORSER OF A NEGOTIABLE INSTRUMENT PAYABLE IN A FOREIGN JURISDICTION.—The contract of a drawer or indorser of a negotiable instrument, as distinguished from the contract of the acceptor or maker, being performable at the *locus contractus,* the liability of the drawer or indorser is generally measured by the law of the place where the instrument was drawn or indorsed. Story, Conf. of Laws, §§ 314, 315, and cases cited. A qualification is found in cases treating of conditions precedent to the liability of the drawer or indorser—formal acts associated with the place of payment—where the courts have recognized the requirements of business necessity. Logic would demand that questions of the necessity or sufficiency of any act upon which the liability under a contract is conditioned, should be determined by the law of the place where the contract was made and is to be performed; while practical expediency requires that acts such as demand, protest, and notice, which in their nature are performable where the instrument is payable, should be controlled by the law of that place. A distinction appears to be made between the necessity of the act and the sufficiency of the act. By the weight of authority, necessity of demand and protest as a condition of holding the drawer or indorser, is determined by the law of the place where the instrument was drawn or indorsed. *Thorp* v. *Craig* (1860) 10 Ia. 461; *Aymar* v. *Sheldon* (N. Y. 1834) 12 Wend. 439; *Gay* v. *Rainey* (1878) 89 Ill. 221. The necessity of suing the acceptor or maker in order to hold the drawer or indorser is similarly determined. *Levy* v. *Cohen* (1848) 4 Ga. 1; *Hunt* v. *Standardt* (1860) 15 Ind. 33. But the sufficiency of the demand and protest, including consideration of the time and manner, is determined by the law of the place where the instrument is payable, *Donnegan* v. *Wood* (1873) 49 Ala. 242; *Sylvester* v. *Crohan* (1893) 138 N. Y. 494. *Pierce* v. *Indseth* (1882) 106 U. S. 546, together with the maturity of the

instrument, involving the question of days of grace, *Cribbs* v. *Adams* (Mass. 1869) 13 Gray 597; *Bowen* v. *Newell* (1855) 13 N. Y. 290. No distinction is made, however, between the necessity and the sufficiency of notice, both being determined by the *lex loci contractus,* according to the greater authority, *Huse* v. *Hamblin* (1870) 29 Ia. 501; *Snow* v. *Perkins* (1851) 2 Mich. 238; *Cook* v. *Litchfield* (1853) 9 N. Y. 279, although the practical objection to this rule—that it compelled the holder to know the law of the place where each indorsement was made in order to be secure in his rights against the respective indorsers—has induced the English courts to make the reasonableness of the notice a possible subject of inquiry. *Hirchfeld* v. *Smith* (1866) L. R. 1 C. P. 340; *Horne* v. *Rouquette* (1878) L. R. 3 Q. B. Div. 514.

The current of authority indicated is opposed by a unique decision in New York where the court held that the contract of the drawer of a bill or check to pay upon non-acceptance or non-payment by the drawee, was performable where the drawee resides; *Hibernia Nat. Bank* v. *Lacombe* (1881) 84 N. Y. 367; it would follow that with respect to protest and notice the law of the place upon which the instrument was drawn would govern. *Union Nat. Bank* v. *Chapmon* (1902) 169 N. Y. 538. The court relied on *Everett* v. *Vendryes* (1859) 19 N. Y. 436 and *Lee* v. *Selleck* (1865) 33 N. Y. 615. The *Everitt* case held that the form of an indorsement of a bill of exchange drawn and indorsed in New Granada but payable in New York, and its sufficiency to transfer title to the indorsee for the purpose of bringing suit were to be determined by the law of New York. The court admitted that if the action had been against the indorser the law of New Granada would have governed. It seems that the liability of the drawer was unquestioned and that the issue related to the right of one of two parties to sue—a question pertaining to the remedy and determinable by the *lex fori. Foss* v. *Nulting* (Mass. 1860) 14 Gray 484; *Scudder* v. *Union Nat. Bank* (1875) 91 U. S. 406, 413. In the *Lee* case the question was whether the law of New York governed with respect to the necessity of suit against the maker as a condition of holding the indorser of a note indorsed in Illinois and sent through the mail to the indorsee in New York. The court assumed that the law of the place where the indorsement was made governed, but held that under the circumstances the indorsement was made in New York. *Hibernian Nat. Bank* v. *Lacombe, supra,* therefore, was without substantial support, and appears to be limited to its precise facts, as a recent decision settles the law of New York in accordance with the general rule. A foreign bill of exchange was indorsed by the drawer to bankers in New York who sent it to their agent in Vienna to collect. The agent failed to protest the bill or to give notice to the drawer on the refusal of the drawees to pay as required by the laws of New York. The court held that the drawers were discharged from liability though under the laws of Austria no protest was necessary. *Amsinck* v. *Rogers* (N. Y. 1907) 82 N. E. 134.